



A subsidiary of Green Plains Renewable Energy, Inc.

24096 170th Avenue
Fergus Falls, MN 56537-7518
Phone: 218-998-4301
Fax: 218-998-4302

www.gpreinc.com

March 10, 2011

Minnesota Pollution Control Agency
Air Quality Permit Document Coordinator
Industrial Division/Air Quality Permits Section
520 Lafayette Road North
Saint Paul, MN 55155-4194

RE: Green Plains Otter Tail, LLC (formerly Otter Tail Ag Enterprises, LLC)
Administrative Air Permit Amendment Application
Facility ID No.: 11100077, AQ File No.: 4297

Dear Permit Document Coordinator:

Green Plains Renewable Energy, Inc. submits two copies of the attached administrative air permit amendment application for Green Plains Otter Tail, LLC (formerly known as Otter Tail Ag Enterprises, LLC (OTA)). This amendment reflects a change in ownership and name of this facility as well as a change in the responsible official.

On February 17, 2011, Otter Tail Ag Enterprises, LLC (Case No. 09-61250) was issued a final sale order to Green Plains Renewable Energy, Inc., by the United States Bankruptcy Court, District of Minnesota.

Pursuant to that sale order, closing of the acquisition of assets from Otter Tail Ag Enterprises, LLC by Green Plains Renewable Energy, Inc. and the creation of the new operating entity Green Plains Otter Tail, LLC is scheduled to occur prior to 31st day of March, 2011, and is estimated to occur during the week of March 21-25, 2011.

Included in this permit amendment application are the following:

- Air permit application forms:
 - SCP-01 – Submittal Cover Page
 - CH-GI-01 – Facility Information for Permit Changes
 - CH-00 – Project Screening
 - CH-01 – Change Description
 - CH-02 – Action Type Determination
 - CH-08 – Administrative Amendment
 - CH-14 – Complete Application Requirements
 - CH-15 – SIP Changes and Permits
- A copy of the final sale order for the facility; and
- A check for the application fee in the amount of \$285.

If you have any questions or comments, please contact me at the number below at your earliest convenience.



Green Plains
OTTER TAIL LLC

A subsidiary of Green Plains Renewable Energy, Inc.

24096 170th Avenue
Fergus Falls, MN 56537-7518
Phone: 218-998-4301
Fax: 218-998-4302

www.gpreinc.com

Sincerely,

Green Plains Renewable Energy, Inc.

Ron Gillis
EVP-Finance, Treasurer
(402) 315-1611

Enclosures: As noted

cc: Erica Montefusco, Green Plains Renewable Energy, Inc.
Anthony Hicks, Otter Tail Ag Enterprises, LLC

GPOT-0003848

Vendor ID
MINNESOTAPOLLU

Vendor Check Name
Minnesota Pollution Control Agency (MPCA)


Date
Mar 14, 2011

Check Number
0013132

Invoice Number	Date	PO Number	Description	Paid Amount
APPLICATION FEE	03/10/2011		APPLICATION FEE FOR OTTER	\$285.00

Green Plains Renewable Energy,

TOTAL: \$285.00

 **Green Plains** *Green Plains Renewable Energy*
RENEWABLE ENERGY, INC. 9420 Underwood Ave, Suite 100
Omaha, NE 68114
(402) 884-8700

U.S. Bank National Association
27-2/1040

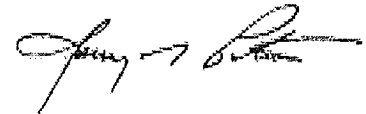
0013132

DATE	AMOUNT
Mar 14, 2011	\$285.00

Pay Two Hundred Eighty Five Dollars and 00 Cents

Void after 90 days

to the Order of: Minnesota Pollution Control Agency (MPCA)
520 LaFayette Road North
St. Paul, MN 55155-4194



Memo:

⑈0013132⑈ ⑆104000029⑆105701003706⑈

GPOT-0003849



**Minnesota Pollution
Control Agency**

520 Lafayette Road North
St. Paul, MN 55155-4194

SCP-01: Submittal Cover Page
Permit Application/Notification/Determination Request
& Fee Submittal

Air Quality Permit Program

Doc Type: Permit Application

Instructions on Page 6

1a) AQ Facility ID No.: 11100077 1b) AQ File No: 4297

2) Facility Name: Green Plains Otter Tail, LLC (formerly Otter Tail Ag Enterprises, LLC)

3) Choose one of the following options and complete the appropriate section of item 3.

- ☐ Submittal is the final version of a previously-submitted permit application, additional or supplemental information needed to complete a previously-submitted permit application, or a request that the MPCA make an applicability determination. **Complete Section 3A.**
- ☒ Submittal is an original application for an individual Part 70 or State permit, an original application for reissuance of an individual Part 70 or State permit, or an original application for an amendment to an existing individual Part 70 or State permit. **Complete Section 3B.**
- ☐ Submittal is a new application for a Registration Permit, Capped Permit, or General Permit, or a new application for an administrative change to an existing Registration, Capped, or General Permit. **Complete Section 3C.**
- ☐ Submittal is a notification required under Minn. R. 7007.1150(C); Minn. R. 7007.1250, subp. 4; or Minn. R. 7007.1350 (note that this will not apply to holders of current Registration permits or Capped permits). **Complete Section 3D.**

Section 3A - Request for Applicability Determination, Recertification of a Previously-Submitted Permit Application, or Supplement to a Previously-Submitted Permit Application

Use this section only if your submittal is one of the following:

- The final version of a previously submitted permit application, incorporating changes negotiated through the permitting process, or
- Submittal of missing or supplemental information to a previously submitted application that was deemed conditionally incomplete, or was deemed administratively complete but additional information was requested, or
- A request for the MPCA to make an applicability determination.

Enter the "tracking number" obtained from the MPCA permit staff working on the permit.

Do not use this section if this is the submittal of your original application, or if your original application was returned and you are resubmitting a new application (use Section 3B or 3C, as applicable)

Check one of the boxes below. Do not complete Sections 3B, 3C, or 3D. Continue with item 4 of the form.

Choose one of the following:	Quantity	Points	Total Points
<input type="checkbox"/> Recertification of a previously-submitted permit application – Tracking No: _____	NA	NA	NA
<input type="checkbox"/> Supplement to a previously-submitted permit application - Tracking No: _____	NA	NA	NA
<input type="checkbox"/> An Applicability Determination Request		x 10 =	

Section 3B - Application for an Individual Part 70 or State Permit, Reissuance of an Individual Part 70 or State Permit, or Amendment of a Part 70 or State Permit

Use this section only if your submittal is one of the following:

- An original application for an individual Part 70 or State permit, or
- An original application for reissuance of an individual Part 70 or State permit, or
- An original application for an amendment to your existing individual Part 70 or State permit.

Do not use this section if this is a final version of a previously-submitted application, or if you are only supplementing a previously-submitted permit application; use Section 3A instead.

Do not use this section if you are applying for a Registration Permit, Capped Permit, or General Permit, or an administrative change to an existing Registration, Capped, or General Permit.

Check as many of the boxes below as apply. Do not complete Section 3C. If your submittal also includes notifications that do not require a permit application, also complete Section 3D. Continue with item 4 of the form.

Choose one of the following:	Quantity	Points	Total Points
<input type="checkbox"/> Application for an individual Part 70 permit		x 75 =	
<input type="checkbox"/> Application for an individual State permit		x 50 =	
<input type="checkbox"/> Application for reissuance of an individual Part 70 or state permit Existing Permit Expiration Date: _____ Application Due Date (180 days prior to permit expiration date): _____	NA	NA	NA
<input type="checkbox"/> Application for a Major Amendment to an individual State or Part 70 permit <input type="checkbox"/> Includes Reconstruction or Modification of a New Source Performance Standards (NSPS) Affected Facility not subject to New Source Review		x 25 =	
<input type="checkbox"/> Application for a Moderate Amendment to an individual State or Part 70 permit		x 15 =	
<input type="checkbox"/> Application for a Minor Amendment to an individual State or Part 70 permit		x 4 =	
<input checked="" type="checkbox"/> Application for an Administrative Amendment to an individual State or Part 70 permit	1	x 1 =	1

Additional Information (check all that apply):

- ☐ Permit will replace an existing permit of a different type (e.g., replacing a Capped Permit with an individual State permit, or replacing a Part 70 General permit with an individual Part 70 permit)
- ☐ Permit is for construction of a new facility - Also complete and submit forms CH-00 and CH-01 as part of the application
☐ Form CH-00 attached ☐ Form CH-01 attached
- ☐ Permit is required because of a modification to an existing facility, making the facility subject for the first time for the requirement for an air emission permit - Also complete and submit forms CH-00 and CH-01 as part of the application
☐ Form CH-00 attached ☐ Form CH-01 attached
- ☐ Project is subject to Prevention of Significant Deterioration (PSD) (40 CFR § 52.21)
- Send a complete copy of the application to U.S. Environmental Protection Agency (EPA) Region V (see instructions).
 - Contact EPA Region V to begin the Endangered Species Assessment process (see instructions).
- ☐ Permit is required because of installation or modification of a Part 61 National Emission Standards for Hazardous Air Pollutants (NESHAP) and/or a Part 60 NSPS Affected Facility at a Stationary Source with Potential-to-Emit below all permit thresholds (Minn. R. 7007.0500, subp. 2.C.(1)).

Section 3C - Application for a Registration, Capped, or General Permit

Use this section only if your submittal is one of the following:

- An new application for a Registration Permit, or
- An new application for a Capped Permit, or
- An new application for a General Permit; or
- An administrative change to an existing Registration, Capped, or General Permit

Do not use this section if this is a final version of a previously-submitted application, or if you are only supplementing a previously-submitted permit application, use Section 3A instead.

Do not use this section if you are applying for an individual Part 70 or State Permit.

Check as many of the boxes below as apply. Do not complete Section 3D. Continue with item 4 of the form.

Choose one of the following:	Quantity	Points	Total Points
<input type="checkbox"/> Application for a Registration Permit <input type="checkbox"/> Option A <input type="checkbox"/> Option B <input type="checkbox"/> Option C <input type="checkbox"/> Option D		x 2 =	
<input type="checkbox"/> Application for a Capped Permit <input type="checkbox"/> Option 1 <input type="checkbox"/> Option 2		x 4 =	
<input type="checkbox"/> Application for a Part 70 General Permit <input type="checkbox"/> Manufacturing General Permit <input type="checkbox"/> Fiberglass General Permit		x 4 =	
<input type="checkbox"/> Application for a State General Permit <input type="checkbox"/> Nonmetallic Mineral Processing General Permit		x 3 =	
<input type="checkbox"/> Application for an Administrative Change to an existing Registration, Capped, or General Permit (e.g., change of facility ownership; see instructions for more)		x 1 =	

Additional Information (check all that apply):

- ☐ Permit will replace an existing permit of a different type (e.g., replacing a Registration Permit with a Capped Permit; replacing an Option B Registration Permit with an Option D Registration Permit; etc.)
- ☐ Permit is required for construction of a new facility
- ☐ Permit is required because of a modification to an existing facility, making the facility subject for the first time for the requirement for an air emission permit

Section 3D - Notification required under Minn. R. 7007.1150(C); Minn. R. 7007.1250, subp. 4; or Minn. R. 7007.1350.

Use this section only if your submittal includes one or more of the notifications listed below. If your submittal also includes an application for an individual Part 70 or State permit, an amendment to an individual Part 70 or State permit, or reissuance of an individual Part 70 or State permit, also complete Section 3B. Check all applicable boxes below, then continue with item 4 of the form.

- ☐ A Notification of Accumulated Insignificant Activities
- ☐ A Notification of Installation of Pollution Control Equipment
- ☐ A Notification of Replacement of a Unit
- ☐ A Notification of Replacement of Controls with Listed Controls
- ☐ A Notification of Changes That Contravene a Permit Term

4) Total Points (add all "total points" from Sections 3A, 3B, and 3C)

1

5) Total Fee

1 x \$285 = \$ 285
(total points from item 4) (fee amount)

The application fee amount is \$285 per point, payable to the Minnesota Pollution Control Agency (MPCA). Send your payment ("fee amount") with your submittal. The fee is not refundable, per Minn. R. 7002.0016, subp. 1.

6a) Confidentiality Statement:

- ☒ This application does not contain material claimed to be confidential under Minn. Stat. §§ 13.37 subd. 1(b) and 116.075. Skip Item 6b, go to Item 7.
- ☐ This application contains material which is claimed to be confidential under Minn. Stat. §§ 13.37 subd. 1(b) and 116.075. Complete Item 6b. Your submittal must include both Confidential and Public versions of your application.

Registration Permit applicants may not claim any portion of their application as confidential. If applying for a Registration permit or an administrative change to a Registration Permit, you must check the first box above ("This application does not contain.....")

- ☐ Confidential Copy of Application attached ☐ Public Copy of Application attached

6b) Confidentiality Certification

To certify data for the confidential use of the MPCA, a responsible official must read the following, certify to its truth by filling in the signature block on the following page, and provide the stated attachments.

- ☐ I certify that the enclosed permit application(s) and all attachments have been reviewed by me and do contain confidential material. I understand that only specific data can be considered confidential and not the entire application or permit. I certify that I have enclosed the following to comply with the proper procedure for confidential material:
- ☐ I have enclosed a statement identifying which data contained in my application I consider confidential, and I have explained why I believe the information qualifies for confidential (or non-public) treatment under Minnesota Statutes.
 - ☐ I have explained why the data for which I am seeking confidential treatment should not be considered "emissions data" which the MPCA is required to make available to the public under federal law.
 - ☐ I have enclosed an application containing all pertinent information to allow for completion and issuance of my permit. This document has been clearly marked "confidential".
 - ☐ I have enclosed a second copy of my application with the confidential data blacked out (not omitted or deleted entirely). It is evident from this copy that information was there, but that it is not for public review. This document has been clearly marked "public copy".

Permittee responsible official:

Mr./Ms. _____
Title: _____
Signature: _____
Date: _____

Co-Permittee responsible official (if applicable)

Mr./Ms. _____
Title: _____
Signature: _____
Date: _____

7) Submittal Certification

I certify under penalty of law that the enclosed documents and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete.

I also certify, in accordance with Minn. R. 7007.0500, subp. 2 (K)(2) and subp. 2 (K)(3), that I have reviewed the procedures implemented by my facility to maintain compliance and that those procedures are, to the best of my knowledge and belief, reasonable to maintain compliance with all applicable requirements, including those that will become applicable during the term of the permit.

Permittee responsible official:

Mr./Ms. Mr. Ron Gillis
Title: EVP-Finance, Treasurer
Signature: *Ron B. Gillis*
Date: 03/10/11

Co-Permittee responsible official (if applicable)

Mr./Ms. _____
Title: _____
Signature: _____
Date: _____

8) Package Submittal

Applications, notifications, and/or requests that are submitted without authorized signature(s) (under Submittal Certification for all applications and under Confidentiality Certification if you are seeking confidential treatment of any information in the application); without required forms, and/or without the required application fee, will be returned. Please make your check out to the Minnesota Pollution Control Agency. Send the complete application package and check to:

**Minnesota Pollution Control Agency
Air Quality Permit Document Coordinator
Industrial Division/Air Quality Permits Section
520 Lafayette Road North
St. Paul, MN 55155-4194**



**Minnesota Pollution
Control Agency**

520 Lafayette Road North
St. Paul, MN 55155-4194

CH-GI-01

Facility Information for Permit Changes

Air Quality Permit Program

Doc Type: Permit Application

Instructions on Page 3

1a) AQ Facility ID No.: 11100077 1b) AQ File No.: 4297

2) Facility Name: Green Plains Otter Tail, LLC (formerly Otter Tail Ag Enterprises, LLC)

3) Facility Location

Street Address: 24096 170th Avenue

City: Fergus Falls County: Otter Tail Zip code: 56537-7518

Note: If the facility is or will be located within the city limits of Minneapolis, attach a map showing the exact location.

Mailing Address: 24096 170th Avenue

City: Fergus Falls State: MN Zip code: 56537-7518

4) Corporate/Company Owner

Name: Green Plains Renewable Energy, Inc.

Mailing Address: 9420 Underwood Avenue, Suite 100

City: Omaha State: NE Zip code: 68114

Owner Classification: ☒ Private ☐ Local Govt. ☐ State Govt. ☐ Federal Govt. ☐ Utility

5) Corporate/Company Operator (if different than owner)

Name:

Mailing Address:

City: State: Zip code:

6) Co-permittee (if applicable)

Name:

Mailing Address:

City: State: Zip code:

7) Legally responsible official for this permit/facility

Mr/Ms: Mr. Ron Gillis Phone: 402-315-1611

Title: EVP-Finance, Treasurer Fax: 402-884-8776

At (check one): ☒ Owner Address ☐ Operator Address ☐ Emission Facility Address

☐ Other (specify):

8) Contact person for this permit

Mr/Ms: Mr. Keith Wetzel Phone: 218-998-4301

Title: Production Manager Fax: 218-998-4302

At (check one): ☐ Owner Address ☐ Operator Address ☒ Emission Facility Address

☐ Other (specify):

E-mail address: kwetzel@otaellc.com

9) All billings for annual fees should be addressed to:

Mr/Ms: Mr. Ron Gillis

Phone: 402-315-1611

Title: EVP-Finance, Treasurer

Fax: 402-884-8776

At (check one): ☒ Owner Address ☐ Operator Address ☐ Emission Facility Address

☐ Other (specify) _____

10) Standard Industrial Classification (SIC) Code and description for the facility:

Primary: 2869 / Non-beverage ethanol manufacturing

Secondary (if applicable): _____ / _____

Tertiary (if applicable): _____ / _____

11) Primary product produced (or activity performed) at the facility is:

Fuel-grade ethanol

12) Facility is: ☒ Stationary ☐ Portable

13) (reserved for future use)

14) Is environmental review required (either an Environmental Assessment Worksheet (EAW) or an Environmental Impact Statement (EIS)) for this facility?

☒ No ☐ Yes -- you may also be required to perform a state air toxics review for your facility. Please call 1-800-657-3864 or locally 651-296-6300.

15) Are you (or will you be, if this is a new facility) required to submit a Toxics Release Inventory (Form R) under SARA Title 313 for this facility? Contact the Minnesota Emergency Planning and Community Right-to-Know Act (EPCRA) Program for more information, at 651-201-7400.

☒ Yes -- Answer Question 15a ☐ No -- Go on to Question 16

15a) Are you required to submit a Pollution Prevention Plan Progress Report in accordance with Minn. Stat. § 115D.08?

☐ No ☒ Yes, and the most recently required progress report has been submitted
☐ Yes, but a progress report has not been submitted because: (fill in reason below)

16) Is this facility within 50 miles of another state or the Canadian border?:

☒ Yes (specify which ones) ND SD ☐ No

17) Are you proposing any alternative operating or emissions trading scenarios in this application? (see Minn. R. 7007.0800, subp. 10 and 11)

☒ No ☐ Yes - attach a description of your proposal, including a statement on how the proposal will meet all applicable requirements (specifically, please address any applicable New Source Review requirements - see Form CH-04).

18) Person preparing this permit application:

Mr. / Ms. Ms. Katie Hill Brandt

Title: Air Quality Engineer

Phone: 612-347-6797

Fax: 612-347-6780

Date: _____

E-mail address klhillbrandt@nrg-llc.com



**Minnesota Pollution
Control Agency**

520 Lafayette Road North
St. Paul, MN 55155-4194

CH-00

Project Screening
Air Quality Permit Program

AQ Facility ID No.: 11100077

AQ File No: 4297

Facility Name: Green Plains Otter Tail, LLC (formerly Otter Tail Ag Enterprises, LLC)

Instructions: Fill out this form last after you've determined the type of permit you need.

Check all applicable boxes on this form that describe your proposed project and your facility.

Applicable Analyses:

- ☐ My project requires an Environmental Assessment Worksheet.

Submitted to (who?): _____ on (date): _____

- ☐ My project requires an Environmental Impact Statement.

Submitted to (who?): _____ on (date): _____

- ☐ My project requires a Prevention of Significant Deterioration (PSD) permit, utilizes the Plant-wide Applicability Limit requirements of 40 CFR § 52.21, and/or involves a Best Available Control Technology (BACT) Analysis (either a new analysis or revisions to previous permit conditions).

- ☐ My project involves a case-by-case Maximum Achievable Control Technology (MACT) determination under section 112(g)(2)(B) of the Clean Air Act Amendments of 1990 as described on form CH-07.

- ☐ My project involves a site-specific alternative monitoring request under 40 CFR § 60.13(i) or 40 CFR § 63.8(f).

- ☐ My project involves changes to limits or requirements that are identified as State Implementation Plan (SIP) requirements in my permit or Administrative Order. (Use Form CH-15 to determine this.)

- ☐ My project involves ambient air dispersion modeling for criteria pollutants.

- ☐ My project involves an Air Emissions Risk Analysis (AERA).

Submitted to (who?): _____ on (date): _____

- ☐ Per the July 16, 2008, guidance on Greenhouse Gases (<http://www.pca.state.mn.us/publications/greenhousegas-memo0708.pdf>), my project requires a Greenhouse Gas Emissions Evaluation.

Is the evaluation included with the permit application? ☐ Yes ☐ No

- ☐ My project requires at least one other media permit in addition to an air permit.

_____ (list permits: e.g., NPDES permit).

Application submitted to (who?): _____ on (date): _____

- ☒ None of the above

Industry Sector:

- ☐ Petroleum refining
☐ Pulp and/or paper mill
☐ Composite wood products (e.g., OSB)
☐ Metallic mining
☒ Non-beverage ethanol production
☐ Waste combustor
☐ Electric utility
☐ None of the above



Minnesota Pollution Control Agency

520 LAFAYETTE ROAD ST. PAUL, MN 55155-4194

PERMIT CHANGE FORM **CH-01**

CHANGE DESCRIPTION

(FORMERLY MOD-01 MODIFICATION DESCRIPTION)

6/30/05

Use Form CH-02 to determine if a permit amendment is required for your proposed change or modification. If an amendment is required, provide below a description of each physical and operational change, or proposed change to existing permit conditions, included in this application. This includes addition of new units, removal or replacement of existing units, or changes which may result in debottlenecking of emission units.

- 1a) AQ Facility ID No.: 11100077
- 1b) AQ File No. 4297
- 2) Facility Name.: Green Plains Otter Tail, LLC (formerly Otter Tail Ag Enterprises, LLC)
- 3) Does your project involve construction or a physical or operational change to your facility?
- ☒ No. Go to question 5
- ☐ Yes. ☐ Construction or physical change ☐ Operational change
- 4) Do you need your permit issued by a certain date?
- ☐ No. Go to question 5
- ☐ Yes. Date: _____
- Reason: _____
- 5) Description of proposed project

New ownership of the facility has resulted in a name change to: Green Plains Otter Tail, LLC.

The new Corporate Owner/Operator is:
Green Plains Renewable Energy, Inc.

The new Responsible Official is:
Ron Gillis, EVP-Finance, Treasurer
9420 Underwood Avenue, Suite 100
Omaha, NE 68114
phone: 402.315.1611 / fax: 402-884-8776
email: Ron.gillis@gpreinc.com

The new Permit Contact is:
Keith Wetzel, Production Manager
Green Plains Otter Tail, LLC
24096 170th Avenue
Fergus Falls, MN 56537
phone: 218-998-4301 / fax: 218-998-4302
email: kwetzel@otaellc.com



**Minnesota Pollution
Control Agency**

520 Lafayette Road North
St. Paul, MN 55155-4194

CH-02

Action Type Determination

Air Quality Permit Program

Doc Type: Permit Application

1a) AQ Facility ID No.: 11100077

1b) AQ File No.: 4297

2) Facility Name: Green Plains Otter Tail, LLC (formerly Otter Tail Ag Enterprises, LLC)

Answer the questions on this form, referring to and completing the additional forms as directed, to determine if a permit or amendment is required (and if so what type), or if a notification is required.

3. Does the proposed change or modification require a major amendment? Complete Form CH-03 and all forms referenced therein.
☐ Yes. Go to question 8.
☒ No. Go to question 4.
4. Does the entire proposed change or modification consist **only** of insignificant activities described in Minn. R. 7007.1300, subparts 2 and/or 3, or conditionally insignificant activities listed in Minn. R. 7008.4100 and/or Minn. R. 7008.4110?
☐ Yes. The proposed change qualifies as an insignificant modification. Use Form CH-12 to determine if notification to the MPCA is required. If notification is required, go to Form CH-14 to determine what must be submitted.
☒ No. Part of the project is not one of the listed insignificant activities listed in Minn. R. 7007.1300, subp. 2 and/or 3. Go to question 5.
5. Can the change be done through an administrative amendment? Use Form CH-08 to determine Yes or No.
☒ Yes. Go to Form CH-14 to determine what must be submitted.
☐ No. Go to question 6.
6. Can the change be made through the "contravening permit terms" provision? Use Form CH-09 to determine Yes or No.
☐ Yes. Go to Form CH-14 to determine what must be submitted.
☐ No. Go to question 7.
7. Calculate the emissions increase as described on Form CH-10. Is there an increase?
☐ Yes. Complete Form CH-10 to determine if a minor or moderate amendment is needed. If a minor or moderate amendment is needed, go to question 8. If the change qualifies as an insignificant modification, keep records and use Form CH-12 to determine if notification is required.
☐ No. Complete Form CH-12 to determine what notification or recordkeeping requirements apply.
8. Complete Form CH-11 to determine your status with regard to crossing permit thresholds, and indicate that status below.
☐ This change can be made through the permit amendment provisions of Minn. R. 7007.1450 or 7007.1500, using the forms indicated on Form CH-14.
☐ This change requires issuance of a Title V or State operating permit. Include a completed Total Facility Application.
9. Complete Form CH-13 to determine what state rules apply to the equipment you are adding or the changes you are proposing.
10. Complete Form CH-00, summarizing the category of change and industry type.



Minnesota Pollution
Control Agency

520 Lafayette Road North
St. Paul, MN 55155-4194

CH-08

Administrative Amendment Determination

Air Quality Permit Program

Doc Type: Permit Application

Instructions on Page 2

1a) AQ Facility ID No.: 11100077

1b) AQ File No.: 4297

2) Facility Name: Green Plains Otter Tail, LLC (formerly Otter Tail Ag Enterprises, LLC)

Permit changes described on this form may be made through the administrative permit amendment process. By answering the following question, please verify that the proposed change does not require a major amendment:

I answered "no" to all questions on Form CH-03

- ☐ No. I answered "yes" to one or more questions on Form CH-03. This means that the proposed change requires a major amendment, and the administrative amendment process is not applicable.
- ☒ Yes. To apply for an administrative amendment, indicate which of the following **completely** describes the change needed to your permit.
- ☐ A. An amendment to correct a typographical error.
- ☒ B. An amendment to change the name, mailing address, or telephone number of any person identified in the permit, or that reflects a similar minor administrative change at the permitted facility. A change in the stationary source's location of operation is not covered by this item.
- ☐ C. An amendment requiring the permittee to comply with additional, more frequent, or expanded testing, monitoring, recordkeeping, or reporting requirements
- ☐ D. An amendment to eliminate monitoring, recordkeeping, or reporting requirements if:
- The requirements are rendered meaningless because the only emissions to which the requirements apply will no longer occur.
 - The change is to eliminate one validated reference test method for a pollutant and source category in order to add another.
 - The requirements are redundant to or less strict than other existing requirements.
 - The requirements are technically incorrect and their elimination does not affect the accuracy of the data generated or of the monitoring information recorded or reported.
 - The piece of equipment to which the monitoring, recordkeeping, or reporting requirement applies no longer exists or has been permanently disabled from use at the stationary source.
- ☒ E. An amendment reflecting a change in ownership or operational control of a stationary source where the Minnesota Pollution Control Agency (MPCA) determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the MPCA.
- ☐ F. An amendment to incorporate into a permit the requirements from preconstruction review permits issued by the MPCA, incorporate into a permit the requirements from standards adopted under Code of Federal Regulations, title 40, part 63, as amended (National Emission Standards for Hazardous Air Pollutants for Source Categories), or to lower the plantwide emission limits in permits with Plantwide Applicability Limits to reflect the impact of standards adopted under Code of Federal Regulations, title 40, part 63, as amended;
- ☐ G. An amendment to clarify the meaning of a permit term.
- Note:** Administrative amendments cannot make substantive changes to permit
- ☐ H. An amendment to extend a deadline in a permit by no more than 120 days, provided that the MPCA may only extend a deadline established by an applicable requirement described in Minn. R. 7007.0100, subp. 7(A)-(K), if the Agency has been delegated authority to make such extensions by the administrator of U. S. Environmental Protection Agency (EPA). Notwithstanding the previous sentence, the MPCA may do an administrative amendment to extend a testing deadline in a permit up to 365 days if the MPCA finds that the extension is needed to allow the permittee to test at worst case conditions as required by Minn. R. 7017.2025, subp. 2.

- ☐ I. An amendment to remove any condition from a permit which was based on an applicable requirement that has been repealed, but only if the permit condition:
- Is neither required nor replaced by another applicable requirement; and
 - was not established for a specific facility to protect human health and the environment, to prevent pollution, as a mitigation measure in an environmental impact statement, or to obtain a negative declaration in an environmental assessment worksheet, and
- ☐ J. An amendment to correct or update a citation to an applicable requirement where the corresponding permit condition is not changed.
- ☐ K. An amendment to include operating conditions that ensure that waste combustors emit mercury at less than 50 percent of the applicable standard.

If any of the above are checked, and the checked change completely describes your proposed changes (i.e., there is nothing else that is being changed other than what is indicated on this form), then the change qualifies for an administrative amendment. Answer "yes" to Question 5 on Form CH-02. Attach a sheet describing the section of the permit that is to be amended and your proposed new permit conditions. You may wish to submit a marked-up copy of the relevant portions of your existing permit to provide this information clearly.

Instructions for Form CH-08

- 1a) AQ Facility ID No.** -- Fill in your Air Quality (AQ) Facility identification (ID) Number (No.). This is the first eight digits of the permit number for all new permits issued under the operating permit program.
- 1b) AQ File No.** -- Fill in your AQ File Number. This is the first group of characters in your current Air Emission Facility Permit. For example, for permit number 1899AB-93-OT-1, the AQ Facility ID number would be 1899AB.
- 2) Facility Name** -- Enter your facility name.

You **must** apply for an administrative amendment if:

- a) There has been a change in ownership or operational control of your facility. With the application for the amendment, you need to provide some additional information (described in Minn. R. 7007.1400, subp. 1(E)); or if,
- b) There has been a change in the name, mailing address, or telephone number of any person identified in the permit. You may not use the administrative amendment procedure to change the location of your facility. You **may** apply for an administrative amendment for several other reasons. These reasons are listed in Minn. R. 7007.1400, subp. 1. and on the first two pages of this form.

If you need to change the general contact information for your facility (e.g., information that does not appear in the permit, such as contact or billing name, phone number, e-mail, etc.), this does not require a permit action but you do need to notify the MPCA so that we have current information for your facility. Submit a letter to the MPCA's Air Quality Permit Document Coordinator, IND/AQP, explaining the changed information.

Administrative Permit Amendment Requirements:

- You must apply for an administrative permit amendment using the forms indicated on Form CH-14. Specify the section of the permit that is to be amended and state the reason for the amendment. Unless the change is for ownership or operational control, you may proceed with the change proposed in the administrative amendment immediately after the MPCA receives the request. If the change is for ownership or operational control, the new owner or operator must agree to comply with the terms of the existing permit before the amendment can be made.
- If the administrative permit amendment is to a Part 70 permit, the MPCA shall submit a copy of the amended permit or permit amendment to the EPA for a 45-day review period, as required by the EPA.
- The only administrative amendments to which the permit shield established by part 7007.1800 shall apply are those described in subp. 1, item F.
- Amendments to the acid rain portion of a permit shall be governed by, 40 CFR Part 72, as amended.
- The permittee may make the change proposed in the administrative amendment request immediately after the request is received by the MPCA, if the change is described above. However, if the change is of ownership or operational control, the new owner's or operator's right to operate the permitted stationary source under the previous sentence is contingent upon the new owner's or operator's compliance with the terms of the stationary source's permit.



**Minnesota Pollution
Control Agency**

520 Lafayette Road North
St. Paul, MN 55155-4194

CH-14

Complete Application Requirements

Air Quality Permit Program

Doc Type: Permit Application

Instructions on Page 2

1a) AQ Facility ID No.: 11100077

1b) AQ File No.: 4297

2) Facility Name: Green Plains Otter Tail, LLC (formerly Otter Tail Ag Enterprises, LLC)

Minn. R. 7007.0600 describes what a complete permit application must include. Please note that a complete permit application for the modification must be included with this submittal or the application will be deemed incomplete. The following information must be included in your application **if it applies to the modification**. Please complete the following to verify that you have included all the needed information. **Note** that this does not include the forms required for submittal of an Applicability Determination Request; see Form CH-16.

All applications or notifications

- ☒ SCP-01 ☒ CH-01 ☒ CH-00
☒ CH-GI-01 ☒ CH-14 ☒ CH-15
☒ CH-02

**All Applications for Major, Moderate, or Minor
Amendments**

- ☐ CH-03 ☐ CH-11
☐ CH-04 ☐ CH-13
☐ CH-04a (existing major sources under NSR)
☐ CH-04b (existing non-major sources under NSR)
☐ CH-05 ☐ CD-01
☐ CH-06 ☐ GI-07
☐ CH-07

**Additional Requirements for Some Major
Amendments**

- ☐ Limits required because of performance testing or modeling results, if not already incorporated into your permit (photocopies of Minnesota Pollution Control Agency (MPCA) correspondence fulfills this requirement)
☐ GI-09H, to determine if a physical change to or addition of new equipment with add-on control equipment is subject to CAM, and a CAM Submittal (including a CAM Plan), if so indicated by Form GI-09H
☐ EMS-00, if permit is to incorporate Environmental Management System (EMS) provisions

**Additional Requirements for Moderate or
Minor Amendments**

- ☐ CH-10

NSR = New Source Review

All Applications for Administrative Amendments

- ☒ CH-08

Contravening Permit Terms

- ☐ CH-09 ☐ CH-12

Notifications for Changes Not Requiring a Permit

- ☐ CH-12

Additional Forms Dependent on Change Requested

- ☐ PAL-01, PAL-02, MI-02c (to request a new PAL under NSR)
☐ IA-01 (to describe changes to listed insignificant activities)
☐ GI-02 (to describe changes in process flow)
☐ GI-03 (to describe changes in stack layout)
☐ GI-04 (to describe new, removed, or changed stacks)
☐ GI-05a (to describe new, removed, or changed control equipment)
☐ HE-01/CR-02 (to describe and certify hood efficiency associated with new or changed control equipment **not** collecting through a total enclosure)
☐ GI-05b (to describe new, removed, or changed emissions units)
☐ GI-05c (to describe new, removed, or changed storage tanks)
☐ GI-05d (to describe new, removed, or changed fugitive sources)
☐ HG-01 (for taconite production secondary metal production, fuel combustion for electricity generation or industrial boilers, or incinerators, if there is **any** increase in mercury emissions)
☐ ME-01 (to describe new, removed, or changed continuous monitoring systems or components)



**Minnesota Pollution
Control Agency**

520 Lafayette Road North
St. Paul, MN 55155-4194

CH-15

SIP Changes and Permits
Air Quality Permit Program

1a) AQ Facility ID No.: 11100077 1b) AQ File No.: 4297
2) Facility Name: Green Plains Otter Tail, LLC (formerly Otter Tail Ag Enterprises, LLC)

Section I

I.1 Does your facility have source specific State Implementation Plan (SIP) conditions contained in a Part 70 permit or a federally enforceable state operating permit or has your facility been issued an Administrative Order (Order) to ensure compliance with a national ambient air quality standard (NAAQS)? (This would include permit conditions labeled "Title I condition: SIP for [pollutant] NAAQS"). If your facility is listed in Table 1 below, you have source specific SIP conditions.

☐ Yes. Check all applicable pollutants and continue with Section II.

- ☐ Sulfur Dioxide (SO₂)
☐ Particulate matter less than 10 microns (PM₁₀)
☐ Lead

☒ No. **Stop here**, and submit this form with your application for a permit amendment or operating permit reissuance.

Section II

II.1 Where are the SIP conditions that apply to your facility?

- ☐ In the current operating permit
☐ In the Order
☐ In both the current operating permit and the Order

II.2 This permit application is for

- ☐ Reissuance of the operating permit
☐ An amendment to the current operating permit

Whether you are proposing changes through an application for a facility modification, or if you are submitting a reissuance application and there have been changes at your facility that are not included in the current operating permit or the Order, complete the rest of this form considering those changes as the 'proposed change.' If your facility is subject to the Order, Minnesota Pollution Control Agency (MPCA) will initiate a SIP revision to transfer the Title I conditions from the Order to the Permit.

II.3 Does the proposed change involve equipment or operating parameters that are subject to a Title I SIP condition in your permit or a requirement from your Order?

- ☐ Yes
☐ No

II.4 Does the proposed change add an emission unit(s) or stack/vent that will emit the criteria pollutant(s) identified in Section I?

- ☐ Yes
☐ No

II.5 Does the proposed change increase the emission rate of the criteria pollutant(s) at any of the existing emission points (emission unit, control equipment or stack/vent)?

- ☐ Yes
☐ No

II.6 Does the proposed change increase the overall emission rate of that criteria pollutant at the facility?

- ☐ Yes
☐ No

FINAL SALE ORDER

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Case No. 09-61250

Otter Tail Ag Enterprises, LLC,

Chapter 11

Debtor.

ORDER (I) AUTHORIZING DEBTOR, TO SELL ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES TO BUYER IN ACCORDANCE WITH ASSET PURCHASE AGREEMENT; (II) APPROVING THE ASSUMPTION AND ASSIGNMENT OR REJECTION OF CERTAIN UNEXPIRED LEASES AND EXECUTORY CONTRACTS; AND (III) GRANTING OTHER AND FURTHER RELIEF

The Sale Motion of above-referenced Debtor for an Order: (I) Approving Form of Asset Purchase Agreement and Designating Stalking Horse Bid; (II) Approving Break-Up Fee and Expense Reimbursement; (III) Approving Bidding and Auction Procedures (IV) Authorizing Debtor to Sell Assets Free and Clear of Liens, Claims, Interests, and Encumbrances; (V) Approving the Solid Waste Agreement relating to the sale of the Debtor's Solid Waste Facilities (on an expedited basis); (VI) Authorizing Assumption and Assignment or Rejection of Unexpired Leases and Executory Contracts; (VII) Approving Form and Notice of Sale; and (VIII) Scheduling Further Sale Hearing (the "Sale Motion").¹ came before the undersigned on January 27, 2011, and this Court entered its Order dated January 27, 2011 approving the Motion (the "Sale Procedure Order.")

In accordance with the 363 Sale Order and the Bidding Procedures approved therein by the Court, the Debtor now, having followed said Bidding Procedures, has sought in a subsequent hearing held on February 17, 2010, final authority by this court order to sell its assets to the

¹ Capitalized terms not defined herein shall have the meanings ascribed to such terms in the Asset Purchase Agreement, the Sale motion and/or the Bidding Procedures, as applicable, unless the context requires otherwise.

Prevailing Bidder and to distribute certain proceeds thereof and assets of the estate in accordance with the 363 Sale Order and the agreement approved thereby.

Based on the Sale Motion, the 363 Sale Order, the arguments of counsel, all the files, records and proceedings herein, including the Affidavit of Christopher Wu, the Court being advised in the premises, and for those reasons stated orally and recorded in open court following the close of evidence:

IT IS HEREBY FOUND THAT:

A. This Court has jurisdiction to hear and determine the Sale Motion pursuant to 28 U.S.C. §§ 157 and 1334 and Local Rule 1070-1.

B. Venue of this case ("Chapter 11 Case") in this district is proper pursuant to 28 U.S.C. § 1409(a).

C. Approval of the Sale is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (N). The statutory predicates for the relief requested herein are Sections 105(a), 363(b), (f), and (m), and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, and 6006.

D. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a).

E. Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, the Court expressly finds that (i) time is of the essence; (ii) there is no just reason for delay in the implementation of this Order; and (iii) the Court expressly directs entry of judgment as set forth herein.²

F. An initial hearing (the "Sale Procedures Hearing") on the Sale Motion was held by this Court on January 27, 2011, and, on that date, the Court entered the Sales Procedure Order.

² Findings of Fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. *See* Bankruptcy Rule 7052.

G. The Debtor and OTAV LLC, a wholly owned subsidiary of Green Plains Renewable Energy, Inc., (collectively, "Buyer") have complied with the Sale Procedures Order in all respects.

H. Pursuant to the Sale Procedures Order, the Debtor received no further Qualified Bids on or before February 11, 2011, and therefore did not hold an Auction as previously scheduled on February 16, 2011. The Sale Procedures Order set February 17, 2011 as the date of the hearing ("Sale Approval Hearing") for an order to approve the Sale ("Sale Approval Order").

I. Sufficient notice of this Motion has been given in compliance with Local Rule 9013-3(a)(2) has been given to: (i) the United State Trustee; (ii) counsel for the Potentially Secured Parties; (iii) the SEC; (iv) the United States Attorneys' Office for the District of Minnesota and the Department of Justice in Washington, D.C.; (v) the Internal Revenue Service; (vi) all relevant federal, state and local taxing authorities at their statutory addresses; (vii) all parties who have filed a request for service of all pleadings pursuant to and in accordance with Bankruptcy Rule 2002 as of the day prior to service of the Motion; (viii) Buyer; (ix) all non-Debtor parties to executory contracts, unexpired leases, and other agreements with the Debtor (entered into before or after the Petition Date; (x) all known creditors of the Debtor.³

J. On January 7, 2011, the Debtor filed the Sale Motion and served copies of the Sale Motion in material compliance with Local Rule 9013-3(a)(2). On January 28, 2011, Debtor served the Notice of Sale and Bidding Procedures in material compliance with the Sale Procedures Order. On February 1, 2011, the Debtor served Notice Concerning Unexpired Leases and Executory Contracts on the counterparties to such leases and contracts, which Notice also included

³ To the extent the Debtor has previously served any party identified herein via electronic mail, such service of the Sale Notice constitutes good and sufficient notice thereof.

notice of the Sale and certain bar dates to file objections.⁴

K. The Debtor published notice of the Sale Motion, the Bidding Procedures, the hearing(s) seeking approval of the Sale Motion, the time and place of the proposed Auction of the Acquired Assets, and the time for filing objections to the Sale Motion in the *Minneapolis Star Tribune* on January 31, 2011 and in the *Wall Street Journal Midwest Edition* on February 2, 2011.

L. Based upon the foregoing and the certificates of service and publication filed with the Court, due, proper, timely, adequate and sufficient notice of the Sale Motion, the initial hearing on the Sale Motion, the Auction, the Sale Approval Hearing, the Sale of the Acquired Assets, the proposed assumption and assignment of the Assumed Leases and Acquired Contracts and the proposed rejection of the contracts has been provided in accordance with Section 102(1), Section 363(b) and Section 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9007 and 9008, due process of law and in compliance with the Sale Procedures Order and no other or further notice of the Sale Motion, the initial hearing on the Sale Motion, the Auction, the Sale Approval Hearing, the Sale of the Acquired Assets, the proposed assumption and assignment of the Assumed Leases and Acquired Contracts, the proposed rejection of the contracts or the entry of this Sale Approval Order is required or necessary.

M. All parties in interest, including, without limitation, all parties who claim an interest in or lien upon the Acquired Assets, all equity members of the Debtor, all U.S. or foreign federal, state and local governmental taxing authorities who have, or as a result of the Sale of Acquired Assets may have, claims, contingent or otherwise against the Debtor, have been given a reasonably opportunity to object and be heard, regarding the relief requested in the Sale Motion.

⁴ Holders of Assumed Leases and Acquired Contracts or Rejected Contracts were also served with the Sale Motion and Notice of Sale, except that four parties holding Assumed Leases or Acquired Contracts were served only the Notice Concerning Unexpired Leases and Executory Contracts including: BNSF Railway Co., Otter Tail Valley Railroad; City of Fergus Falls and Great Plains Natural Gas Co. The court finds that these four parties received sufficient notice of the sale and assumption and assignment of contracts, and opportunity to object.

The notices discussed above set a bar date for all parties to object to the Sale of February 11, 2011, and for holders of Assumed and Acquired Contracts and Leases to object to the assumption and assignment of February 14, 2011. The Bankruptcy Court and the Debtor received no objections to the Sale or the assumption and assignment of Assumed Acquired Contracts and Leases.

N. As demonstrated by the testimony or other evidence proffered or adduced at the Sale Approval Hearing: (i) the offer from the Buyer constitutes the highest and best offer(s) for the Acquired Assets; (ii) the Debtor conducted an auction process in accordance with, and have otherwise complied in all respects with, the Sale Procedures Order; (iii) the auction process set forth in the Sale Procedures Order afforded a full, fair, and reasonable opportunity for any person or entity to make a higher or otherwise better offer to purchase the Acquired Assets; and (iv) the auction process was duly noticed and conducted in a non-collusive, fair, and good faith manner and a reasonable opportunity has been given to any interested party to make a higher and better offer for the Acquired Assets.

O. In accordance with the Sale Procedures Order, the Asset Purchase Agreement was deemed a Qualified Bid (as defined in the Bidding Procedures) and was eligible to participate at the Auction.

P. After consultation with the Consulting Parties in accordance with the Bid Procedures, the Debtor has determined that the APA constitutes the highest and best offer for the Acquired Assets, and will provide a greater recovery for the Debtor's estate than would be provided by any other available alternative. The Debtor's determination that the APA constitutes the highest and best offer for the Acquired Assets constitutes a valid and sound exercise of the Debtor's business judgment.

Q. The APA represents a fair and reasonable offer to purchase the Acquired Assets

under the circumstances of the Chapter 11 Case. No other Person or entity or group of entities has offered to purchase the Acquired Assets for greater economic value to the Debtor's estate than the Buyer.

R. The purchase price as set forth in the APA (the "Purchase Price") for the Acquired Assets is fair and reasonable, and constitutes reasonable consideration and reasonably equivalent and fair market value (as those terms are defined in each of the Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act and Section 548 of the Bankruptcy Code) under the Bankruptcy Code and under the laws of the United States, any state, territory, possession or the District of Columbia. Approval of the APA and the Sale of the Acquired Assets in accordance with this Order and the APA are in the best interests of the Debtor's estate, creditors and other parties in interest. The terms of the APA were negotiated at arms'-length, in good faith, and are fair and reasonable.

S. The APA was not entered into for the purpose of hindering, delaying, or defrauding creditors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession or the District of Columbia. Neither the Debtor nor the Buyer is entering into the transaction contemplated by the APA fraudulently for the purpose of statutory and common law fraudulent conveyance and fraudulent transfer claims.

T. The Debtor has demonstrated compelling circumstances and good, sufficient and sound business purposes for the Sale of the Acquired Assets pursuant to Section 363(b) of the Bankruptcy Code outside of a plan of reorganization and, in that, among other things:

- (1) To maximize the value of the Acquired Assets, a Sale must be accomplished within the time constraints set forth in the APA, the Sale Procedures Order and the Bidding Procedures because the value of the Acquired Assets may decrease during the time it would otherwise take to propose and confirm a plan of reorganization, and, in any event, a plan may not be necessary or confirmable in these Chapter 11 Cases;

- (2) Claims against the Debtor's estate will be minimized as a result of the prompt consummation of a Sale of Acquired Assets. The Buyer will be assuming certain Assumed Liabilities. To the extent that the Buyer assumes the Assumed Liabilities, the holders of such Assumed Liabilities will have no further recourse against the Debtor or its estate and the rights of the holders of such claims to pursue the Debtor or its estates for liability arising from such Assumed Liabilities will be extinguished; and
- (3) The Sale does not constitute a de facto plan of reorganization or liquidation or an element of such a plan for any of the Debtor, as it does not and does not propose to: (i) impair or restructure existing debt of, or equity interests in, the Debtor; (ii) impair or circumvent voting rights with respect to any future plan proposed by the Debtor; (iii) circumvent chapter 11 plan safeguards, such as those set forth in Sections 1125 and 1129 of the Bankruptcy Code; or (iv) classify claims or equity interests, compromise controversies or extend debt maturities.

U. The Debtor (i) has full corporate or other power to execute, deliver, and perform its obligations under the APA and all other documents contemplated thereby or entered into in connection therewith, and the Sale of the Acquired Assets by the Debtor has, in each case, been duly and validly authorized by all necessary corporate or similar action, and (ii) has taken all action necessary to authorize and approve the APA and such other documents contemplated thereby and the consummation by them of the transactions contemplated thereby or entered into connection therewith. No third-party approvals, other than those expressly provided in the APA, if any, are required by the Debtor to consummate such transaction.

V. The Debtor is authorized and directed to sell and transfer the Acquired Assets free and clear of all Claims (as that term is defined in paragraph 7 hereof) because it has satisfied the requirements of Section 363(f) of the Bankruptcy Code.

W. Except for the Assumed Liabilities and except as otherwise provided in the APA, the transfer of the Acquired Assets to the Buyer, and assumption and assignment to the Buyer of the Assumed Leases and Acquired Contracts, will not subject the Buyer to any liability whatsoever with respect to the operation of the Debtor's businesses prior to the Closing Date,

including, without limitation, any liability arising from any of the following: (i) any employment or labor agreements, consulting agreements, severance arrangements, change in control agreements or other similar agreements to which any Debtor is or was a party, (ii) any pension, welfare, compensation or other employee benefit plans, agreements, practices, and programs, including without limitation, any pension plan of the Debtor, (iii) the cessation of the Debtor's operations, dismissal of employees, or termination of employment or labor agreements or pension, welfare, compensation or other employee benefit plans, agreements, practices and programs and any obligations with respect thereto that arise from the Employee Retirement Income Security Act of 1974, the Fair Labor Standard Act, Title VII of the Civil Rights Act of 1964, the Age Discrimination and Employment Act of 1967, the Federal Rehabilitation Act of 1973, the National Labor Relations Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Family Medical Leave Act or the Worker Adjustment and Retraining Notification Act, (iv) workmen's compensation, occupational disease or unemployment or temporary disability insurance claims; (v) environmental liabilities, debts, claims or obligations which may be asserted on any basis, including, without limitation, under the Comprehensive Environmental Response, Compensation and Liability Act or any other environmental, health and safety requirements, (vi) any bulk sales act or similar law, and (vii) any litigation by or against the Debtor.

X. Those holders of Claims against the Debtor, its estate or any of the Acquired Assets who did not object, or who withdrew their objections, to the Sale or the Sale Motion are deemed to have consented to the Sale pursuant to Section 363(f)(2) of the Bankruptcy Code. The Debtor has met the requirements of Section 363(f)(5) with respect to all other holders of Claims as such Claim holders will have their Claims, if any, in each instance against the Debtor, its estate or any of the Acquired Assets, attach to the net cash proceeds of the Sale ultimately attributable to the Acquired

Assets, in which such creditor alleges a Claim, in the same order of priority, with the same validity, force and effect, that such Claims had prior to the Sale, subject to any claims and defenses the Debtor and its estate may possess with respect thereto.

Y. U.S. Bank, National Association, and Otter Tail County hold a claim against the Debtor pursuant to an unrecorded Solid Waste Facility Lease Agreement dated May 1, 2007 (defined in the APA as the "SWF Lease") which is repayable in total by Debtor in the same amount of three bond issuances. The first bond issuance consisted of \$20,000,000 of subordinate exempt facility revenue bonds (Series 2007A)(the "Revenue Bonds"). U.S. Bank National Association (the "Revenue Bond Indenture Trustee") is the indenture trustee for the holders of the Revenue Bonds. The Debtor has also executed a related Guaranty Agreement in favor of the Revenue Bond Indenture Trustee, whereby it guaranteed repayment of the \$20,000,000 with respect to the Revenue Bonds. The payments under the Guaranty Agreement are secured by a Mortgage, Security Interest and Assignment of Rents and Leases in favor of the Revenue Bond Indenture Trustee covering the Debtor's ethanol plant, related real property, and equipment dated May 1, 2007 and recorded in the Office of the County Recorder of Otter Tail County on May 3, 2007, as Instrument No. 1018511 (the "Trustee Mortgage"). Otter Tail County further completed two issuances of general obligation tax abatement bonds (Series 2007B and 2007C) totaling \$6,010,000 (the "General Obligation Bonds"). The payments under the General Obligation Bonds are secured by a Mortgage, Security Interest and Assignment of Rents and Leases in favor of the County covering the Debtor's ethanol plant, related real property, and equipment dated May 1, 2007 and recorded in the Office of the County Recorder of Otter Tail County on May 22, 2007, as Instrument No. 1019565 (the "County Mortgage").

Z. The SWF Lease (as defined in the APA) is not a true lease but rather a security

agreement. The Debtor owns all of the property covered by the SWF Lease, and may transfer that property free and clear of the claims of U.S. Bank, National Association, Otter Tail County, the holders of the Revenue Bonds and the holders of the General Obligation Bonds.

AA. By reason of the Debtor's legal rights and/or the Stipulation and Agreement for Sale and Liquidation of Assets of the Debtor (the "Solid Waste Stipulation") the Debtor has the right to convey title to the Acquired Assets free and clear of any liens or claims of the Revenue Bond Indenture Trustee, the holders of the Revenue Bonds and the County.

BB. The Buyer would not have entered into the APA and would not consummate the transactions contemplated thereby, thus adversely affecting the Debtor, its estate and its creditors, if the sale of the Acquired Assets to the Buyer, the assumption of liabilities and obligations as set forth in the APA by the Buyer and the assignment of the Assumed Leases and Acquired Contracts were not free and clear of all Claims including, but not limited to, successor liability.

CC. The APA was negotiated, proposed and entered into by the parties in good faith, from arm's-length bargaining positions and without collusion. The Debtor has followed in good faith the procedures for notice and sale of the Acquired Assets as set forth in the Sale Procedures Order. The Buyer is not an "insider" or "affiliate" of the Debtor (as each such term is defined in the Bankruptcy Code). Neither the Debtor nor the Buyer have engaged in any conduct that would prevent the application of Section 363(m) of the Bankruptcy Code or cause the application of Section 363(n) of the Bankruptcy Code to the Sale and the transactions contemplated by the APA. Specifically, the Buyer has not acted in a collusive manner with any person and the aggregate price paid by Buyer for the Acquired Assets was not controlled by any agreement among the bidders. The Buyer is entitled to the protections afforded under Section 363(m) of the Bankruptcy Code because the Buyer is a good faith purchaser in that, *inter alia*: (a) except as set forth in the Sale

Procedures Order, the Buyer recognized that the Debtor was free to deal with any other party interested in acquiring the Acquired Assets; (b) the Buyer complied with the provisions in the Sale Procedures Order; (c) the Buyer agreed to subject its bid to the competitive bidding procedures set forth in the Sale Procedures Order; (d) the Buyer in no way induced or caused the chapter 11 filings by the Debtor; (e) all payments to be made by the Buyer in connection with the Sale have been disclosed; (f) no common identity of directors or controlling stockholders exists between the Buyer and the Debtor (g) the Buyer has not entered into any agreements that have not been disclosed to the Court; and (h) the negotiation and execution of the APA was at arms' length and in good faith.

DD. Carl Marks Advisory Group, LLC ("CMAG") acted as the Debtor's financial advisor for the sale of the Acquired Assets and worked with the Debtor and the Buyer to negotiate and finalize the APA and the conveyance of the Acquired Assets to the Buyer pursuant hereto. To the extent that CMAG or any other Person is entitled to any fees in connection with negotiation and consummation of the Sale, Buyer shall not be liable in any way for such fees. The Debtor and its estate shall be solely liable to CMAG or any other Person for any such fees.

EE. In the absence of a stay pending appeal, if any, if the Closing occurs at any time after entry of this Sale Approval Order, then, with respect to the APA, the Buyer, as a purchaser in good faith of the Acquired Assets, shall be entitled to the protections of Section 363(m) of the Bankruptcy Code if this Sale Approval Order or any authorization contained herein is reversed or modified on appeal.

FF. The Debtor has the right and power to convey the Acquired Assets as the sole and lawful owner of the Acquired Assets. Effective as of the Closing, the transfer of the Acquired Assets is or will (i) be legal, valid and effective transfers of property of the Debtor's estate to the

Buyer, as more particularly set forth in the APA, and (ii) vest the Buyer with all right, title, and interest of the Debtor and the Debtor's estate in and to the Acquired Assets free and clear of all Claims (as defined in Paragraph 7 herein) under Sections 363(f) and 105 of the Bankruptcy Code.

GG. Adequate notice and opportunity to be heard was provided to parties to executory contracts and unexpired leases to be rejected or assumed and assigned pursuant to this Sale Approval Order. Further, parties received adequate notice and an opportunity to object to the amount of any cure owed by the Debtor's estates on account of any executory contract or unexpired lease to be assumed and assigned to the Buyer under the APA.

HH. The Debtor has demonstrated that it is an exercise of its sound business judgment to assume and assign those Assumed Leases and Acquired Contracts, as defined in the APA and described on Schedule 2.1(J) to the APA, including any amendments or modifications to such Exhibits as agreed to by the Debtor and Buyer pursuant to the APA (collectively, the "Assumed Contracts"), in connection with the consummation of the Sale of Acquired Assets, and the assumption and assignment of the Assumed Leases and Acquired Contracts is in the best interests of the Debtor, its estate, its creditors and its members. The Assumed Leases and Acquired Contracts being assigned to the Buyer as set forth in the APA are an integral part of the Debtor's business being purchased by the Buyer and, accordingly, such assumption and assignment of Assumed Leases and Acquired Contracts is reasonable, enhances the value of the Debtor's estate, and does not constitute unfair discrimination.

II. The Debtor has obtained a waiver or paid or will pay all amounts it is required to pay in connection with the assumption and assignment of the Assumed Leases and Acquired Contracts, if any (the "Cure Amounts"), due or owing under Sections 365(b)(1)(A) and (B) and 365(f)(2)(A) of the Bankruptcy Code to (i) cure any defaults under the Assumed Leases and

Acquired Contracts specified in this Sale Approval Order or in a separate order of even date or (ii) pay all actual or pecuniary losses that have resulted from such defaults (except with respect to those liabilities expressly assumed by Buyer pursuant to the APA). Accordingly, the Debtor has satisfied the requirements of Sections 365(b)(1)(A) and (B) and Section 365(f)(2)(A) of the Bankruptcy Code. The Assumed Leases and Acquired Contracts are unexpired leases or executory contracts within the meaning of the Bankruptcy Code. The promises of Buyer and the Debtor to pay the Cure Amounts and the Buyer's promise to perform the obligations under the Assumed Leases and Acquired Contracts after the closing date shall constitute adequate assurance of the Buyer's future performance under the Assumed Leases and Acquired Contracts specified in this Sale Approval Order or in a separate order of even date being assigned to it within the meaning of Sections 365(b)(1)(C) and (f)(2)(B) of the Bankruptcy Code.

JJ. The assumption and assignment of the Assumed Leases and Acquired Contracts is integral to the APA and is in the best interests of the Debtor and its estate, creditors and equity members, and represents the exercise of the Debtor's sound business judgment. Any objections to the assumption and assignment of any of the Assumed Leases and Acquired Contracts to the Buyer are hereby overruled. No objections were filed or made with respect to the Cure Amounts associated with such Assumed Leases and Acquired Contracts. To the extent that any counterparty failed to timely object to (i) the proposed assumption and assignment of the applicable Assumed Lease or Acquired Contract or (ii) the Cure Amount associated with the applicable Assumed Lease or Acquired Contract, such counterparty is deemed to have consented to such Cure Amount and the assumption and assignments of its respective Assumed Lease or Acquired Contract to the Buyer.

KK. The Debtor has demonstrated that it is an exercise of its sound business

judgment to reject the Excluded Leases and Excluded Contracts listed on Schedule 2.3(A) to the APA, including any amendments or modifications to such Exhibit as agreed to by the Debtor and Buyer pursuant to the APA (the "Rejected Contracts"), in connection with the consummation of the Sale of the Acquired Assets, and rejection of the Rejected Contracts is in the best interest of the Debtor, its estate, the creditors and the equity members.

LL. Unless such liabilities constitute Assumed Liabilities of the Buyer pursuant to the APA or this Sale Approval Order, the transfer of the Acquired Assets does not and will not subject the Buyer to any liability for Claims (as defined in Paragraph 7 herein) against the Debtor or its estate under the laws of the United States, any state, commonwealth, territory or possession thereof or the District of Columbia applicable to such transactions by reason of such transfer of the Acquired Assets.

MM. Neither the Buyer nor its affiliates shall be deemed, as a result of any action taken in connection with the purchase of the Acquired Assets, to: (1) be a successor (or other such similarly situated party) to the Debtor (other than with respect to the Assumed Liabilities as expressly stated in the APA); (2) have, *de facto* or otherwise, merged with or into the Debtor; (3) be a mere continuation of the Debtor or its estates (and there is no continuity of enterprise between the Buyer and the Debtor); or (4) be holding itself out to the public as a continuation of the Debtor. The Buyer is not acquiring or assuming any liability, warranty or other obligation of the Debtor, except as expressly set forth in the APA with respect to the Assumed Liabilities. The Debtor and its estate, and all parties who claim by or through them, will release and forever discharge the Buyer and any of its affiliates, successors and assigns from any and all claims, causes of action, obligations, liabilities, demands, losses, costs and expenses of any kind, character or nature whatsoever, known or unknown, fixed or contingent, relating to the Sale,

except for liabilities and obligations under the APA.

NN. The Debtor has good, valid and marketable title to all of the Acquired Assets. The Acquired Assets are to be transferred free and clear of any and all Claims. All of the Acquired Assets are, or will on the date of Closing, be owned by the Debtor and will be transferred under the APA.

IT IS HEREBY ORDERED:

General Provisions

1. The Sale Motion is hereby granted to the extent provided herein.
2. No other parties have filed formal objections to the Sale Motion, but to the extent any documents in the record could be construed as objections to the Sale Motion or the relief requested therein that have not been withdrawn, waived, or settled, including all reservations of rights included therein, which are not otherwise provided for by this Sale Approval Order, such objections are overruled on the merits.

Approval of the APA

3. Each and every term of the APA, and all other ancillary documents, is hereby approved.
4. The Sale of the Acquired Assets to Buyer pursuant to the APA is hereby authorized under Section 363(b) of the Bankruptcy Code and the entry of the Debtor into the APA is hereby approved. The proceeds of sale shall first be to pay the administrative costs of the sale, including (i) the Break-Up Fee, and Expense Reimbursement, (ii) the payment of any reasonable Transaction Fee to CMAG, and (iii) payment of other Professional Fees specifically incurred in connection with the Sale, provided that the payment of fees to CMAG and to Debtor's counsel shall be subject to that certain Stipulation and Agreement for Sale and

Liquidation of Assets among the Debtor, the County and the Bond Indenture Trustee dated as of January 25, 2011 (the "Solid Waste Stipulation"). The Net Proceeds (i.e. those amount remaining after payment of the administrative expenses above) from the sale shall be paid first to AgStar Financial Services, PCA on its own behalf and as an Administrative Agent on behalf of MMCDC New Markets Fund II, LLC ("NMF"), until their secured claims are paid in full taking into account any portion of those secured claims that may have been assumed by the Buyer with the written consent of AgStar or NMF as the case may be or both, then, second to the Bond Indenture Trustee and the County as set forth in the Solid Waste Stipulation to the extent and in the manner provided therein. The balance of any sales proceeds, as well as Excluded Assets under the APA, shall be deposited into an account of the Debtor's and will be subject to the Solid Waste Stipulation to the extent set forth therein and to the extent not distributed there under, be available for treatment under a Plan of Liquidation to be filed or amended by the Debtor or as otherwise may be provided by the Bankruptcy Code. All distributions made pursuant to this Order shall be final when made and no longer property of the Debtor or the bankruptcy estate.

5. The Debtor, through any corporate officer, is authorized and directed to execute and deliver, and empowered to fully perform under, consummate, implement and close the APA, together with all additional instruments and documents that may be reasonably necessary or desirable to implement such agreements, including taking any actions that otherwise would require further approval by members or its board of governors (without the need of obtaining such approvals) and to take all further actions as may be reasonably requested by the Buyer for the purpose of assigning, transferring, granting, conveying and conferring to the Buyer, or reducing to possession, any or all of the Acquired Assets, or as may be necessary or appropriate

to the performance of the obligations of the Debtor under the APA, including effectuating amendments to the APA in furtherance thereof. All Persons necessary to effect the transactions contemplated by the APA are hereby ordered to execute any and all documents necessary to effect such transactions. If any Person fails to comply with the provisions of this paragraph 5 prior to the Closing Date, such Person (or Persons, as the case may be) shall nonetheless be deemed bound to any and all documents necessary to effect the transactions contemplated under the APA.

6. The Buyer shall not be required to seek or obtain relief from the automatic stay under Section 362 of the Bankruptcy Code to enforce any of its remedies under the APA or any other Sale-related document. The automatic stay imposed by Section 362 of the Bankruptcy Code is modified solely to the extent necessary to implement the preceding sentence and the other provisions of this Sale Approval Order.

Transfer of the Acquired Assets

7. Pursuant to 11 U.S.C. §§ 105(a), 363(b) and 363(f), the Acquired Assets shall be transferred to the Buyer, in accordance with the APA, free and clear of any and all liens, encumbrances, claims, charges and interests thereon and there against of whatever type or description, including, without limitation, mechanics', materialmen's and other consensual or statutory liens, obligations, mortgages, demands, guaranties, options, rights (including, but not limited to, rights of first refusal, rights of way and rights of recovery), contractual commitments, pledges, restrictions (including, but not limited to, any restriction on the use, transfer, receipt of income or other exercise of any attributes of ownership of the Acquired Assets and all debts arising in any way in connection with any acts of the Debtor), easements, encumbrances, covenants, defects, hypothecations, charges, indentures, loan agreements, instruments, leases,

licenses, conditional sale or other title retention agreements, options, contracts, offsets, recoupment, rights of recovery, judgments, orders, and decrees of any court or governmental entity, (all such claims and interests described in this paragraph shall hereafter be referred to as the "Claim" or "Claims", *provided, however*, the term Claims shall not include Assumed Liabilities), having arisen, existed or accrued prior to and through the Closing Date, whether direct or indirect, monetary or non-monetary, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, absolute or contingent, matured or unmatured, liquidated or unliquidated, of, by or against Debtor or the Acquired Assets and further including, without limitation, the following:

- a. Claims arising through the Closing Date, if any, of any governmental unit for taxes; any Claim arising through the Closing Date relating to any executory contract or lease (whether of personal or real property, or otherwise) affecting or in any way related to the Acquired Assets, without limitation, Claims of Debtor's vendors, suppliers and/or customers arising from Debtor's failure to perform its obligations to said parties whether such failure occurred prior to or on the Closing Date or whether such failure arose as a result of an election by Buyer on or before the Closing Date not to accept and/or perform such vendors', suppliers' or customers' account and/or orders subsequent to the Closing Date;
- b. Any Claim arising through the Closing Date relating to work performed by any contractor or materialman that would give rise to a mechanic's lien, or similar Claim, against the Acquired Assets;
- c. Any Claim arising through the Closing Date for attorney's fees or other costs or expenses claimed by lessors, lessees, licensees or any other non-debtor parties to

executory contracts or any lease;

d. Any Claim arising through the Closing Date based on acts or omissions of the Debtor arising in tort, contract or otherwise, including, without limitation, Claims for successor liability or products liability;

e. Any Claim arising through the Closing Date relating to liability arising under any federal, state or local revenue or tax law or requirement;

f. Any Claim arising through the Closing Date relating to liability arising under (i) any employment or labor agreements, consulting agreements, severance arrangements, change in control agreements or other similar agreements to which Debtor is or was a party, (ii) any pension, welfare, compensation or other employee benefit plans, agreements, practices, and programs, including without limitation, any pension plan of the Debtor, (iii) the cessation of the Debtor's operations, dismissal of employees, or termination of employment or labor agreements or pension, welfare, compensation or other employee benefit plans, agreements, practices and programs and any obligations with respect thereto that arise from the Employee Retirement Income Security Act of 1974, the Fair Labor Standard Act, Title VII of the Civil Rights Act of 1964, the Age Discrimination and Employment Act of 1967, the Federal Rehabilitation Act of 1973, the National Labor Relations Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Family Medical Leave Act or the Worker Adjustment and Retraining Notification Act, (iv) workmen's compensation, occupational disease or unemployment or temporary disability insurance claims; (v) liabilities, debts, claims or obligations which may be asserted on any basis under any environmental laws, rules or regulations including, without limitation, under the Comprehensive Environmental Response, Compensation and

Liability Act or any other environmental, health and safety requirements, (vi) any bulk sales act or similar law, and (vii) any litigation by or against the Debtor

g. Any claim by an employee of the Debtor relating to their termination by the Debtor as a consequence of this Sale Order or the transactions contemplated by the APA.

h. Any claim by any person or entity relating to any health or welfare benefit for the benefit of any current or former employee of Debtor or their dependents or beneficiaries.

In addition, Buyer and its parent and affiliates, successors or assigns or their respective property (including the Acquired Assets) shall not be liable, by operation of law or otherwise, for any Claim by virtue of the purchase of the Acquired Assets or subsequent operation of the Acquired Assets or performance of the Assumed Leases and Acquired Contracts including, without limitation, claims of the type set forth in sub-paragraphs (a)-(h) above.

8. All such Claims released, terminated and discharged as to the Acquired Assets shall attach to the sale proceeds with the same validity, force and effect which they now have as against the Debtors, the estates or the Acquired Assets. The sole and exclusive right and remedy available to purported creditors, equity members, including, without limitation, equity members of the Debtor, holders of Claims, and parties in interest shall be a right to assert Claims against the Debtor's estate.

9. Any and all obligations, liens or rights related to the SWF Lease and Guaranty Agreement are hereby extinguished, and it is hereby further confirmed that the Acquired Assets include the assets previously covered by the SWF Lease and Guaranty Agreement and that such Acquired Assets are transferred free and clear of any and all interests of the mortgage and security interest securing the SWF Lease and related Guaranty Agreement, any interests of the Revenue Bond Indenture Trustee, Otter Tail County, holders of the Revenue Bonds, and holders

of the General Obligation Bonds (all as defined in the APA), including but not limited to the Trustee Mortgage and the County Mortgage.

10. All persons and entities (including, but not limited to, the Debtor, creditors, equity members, including, without limitation, employees, former employees and shareholders, administrative agencies, governmental departments, secretaries of state, federal, state and local officials) and their respective successors or assigns and any trustees thereof, shall be and are hereby permanently and forever barred, restrained and enjoined from commencing or continuing in any manner any action or other proceeding of any kind against the Acquired Assets or the Buyer and its successors or assigns as alleged successor or otherwise with respect to any Claims of any kind and nature with respect to the Acquired Assets, except for Assumed Liabilities.

11. If the proposed Sale fails to close for any reason, then Claims shall continue against the Acquired Assets unaffected by this Sale Approval Order.

12. The Buyer has any and all rights, claims, defenses and offsets held by Debtor and the estate with respect to Assumed Liabilities.

13. Except for Assumed Liabilities as set forth in the APA, the transfer of the Acquired Assets pursuant to this Sale Approval Order shall not subject the Buyer to any liability with respect to any obligations incurred in connection with, or in any way related to the Acquired Assets, prior to the date of Closing or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, directly or indirectly, on any theory of law or equity, including, without limitation, any theory of equitable subordination or successor or transferee liability. The sole and exclusive right and remedy available to any Person who asserts any Claim or other liability with respect to any obligations incurred in connection with, or in any way related to the Acquired Assets, prior

to the date of Closing or by reason of the Sale shall be a right to assert such Claim or other liability against the Debtor's estate.

Assumption and Assignment to Buyer of Assumed Leases and Acquired Contracts

14. Pursuant to 11 U.S.C. §§ 105(a) and 365, and subject to and conditioned upon the Closing of the Sale, the Debtor's assumption and assignment to the Buyer, and the Buyer's assumption on the terms set forth in the APA and this Sale Approval Order, of the Assumed Leases and Acquired Contracts specified in this Sale Approval Order is approved, and the requirements of 11 U.S.C. § 365(b)(1) with respect thereto are deemed satisfied.

15. The Debtors is authorized and directed in accordance with 11 U.S.C. §§ 105(a) and 365 to (a) assume and assign to Buyer, effective upon the Closing of the Sale, the Assumed Leases and Acquired Contracts specified in Schedule 2.1J of the APA, as incorporated into this Sale Approval Order, free and clear of all Claims, other than the Assumed Liabilities, and (b) execute and deliver to the Buyer such documents or other instruments as may be necessary to assign and transfer the Assumed Leases and Acquired Contracts specified in Schedule 2.1J of the APA, as incorporated into this Sale Approval Order, to the Buyer.

16. With respect to the Assumed Leases and Acquired Contracts: (a) each Assumed Lease and Acquired Contract, as applicable, is an unexpired lease or executory contract under Section 365 of the Bankruptcy Code; (b) the Debtor may assume each of the Assumed Leases and Acquired Contracts in accordance with Section 365 of the Bankruptcy Code; (c) the Debtor may assign each Assumed Lease and Acquired Contract in accordance with Sections 363 and 365 of the Bankruptcy Code, and any provisions in any Assumed Lease or Acquired Contract that prohibit or condition the assignment of such Assumed Lease or Acquired Contract or allow the party to such Assumed Lease or Acquired Contract to terminate, recapture, impose any penalty,

condition renewal or extension, or modify any term or condition upon the assignment of such Assumed Lease or Acquired Contract, constitute unenforceable anti-assignment provisions which are void and of no force and effect; (d) all other requirements and conditions under Sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtor and assignment to Buyer of each Assumed Lease and Acquired Contract have been satisfied; (e) the Assumed Leases and Acquired Contracts shall be transferred and assigned to, and following the Closing remain in full force and effect for the benefit of Buyer, notwithstanding any provision in any such Assumed Lease or Acquired Contract (including those of the type described in Sections 365(b)(2), (c)(1) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer and, pursuant to Section 365(k) of the Bankruptcy Code, the Debtor shall be relieved from any further liability with respect to the Assumed Leases and Acquired Contracts after such assignment to and assumption by Buyer; and (g) upon Closing, in accordance with Sections 363 and 365 of the Bankruptcy Code, Buyer shall be fully and irrevocably vested in all right, title and interest of each Assumed Lease and Acquired Contract.

17. Each of the Assumed Leases and Acquired Contracts specified in this Sale Approval Order or in a separate order of even date shall, upon assignment to the Buyer, be deemed to be valid and binding on the Buyer and in full force and effect and enforceable in accordance with their terms, and following such assignment, the Debtor and the estate shall be relieved, pursuant to Section 365(k) of the Bankruptcy Code, from any liability for any breach of such Assumed Leases and Acquired Contracts occurring after such assignment.

18. Each non-Debtor party to an Assumed Lease and Acquired Contract specified in this Sale Approval Order or in a separate order of even date is hereby barred and enjoined from asserting against the Buyer, the Debtor or the Debtor's estate (i) any default existing as of the date

of the Sale Hearing if such default was not raised or asserted in a timely manner prior to the entry of the Sale Approval Order or (ii) any objection to the assumption and assignment of such non-Debtor party's Assumed Leases and Acquired Contracts or the Cure Amount, if any, of which the non-Debtors party was given notice prior to the Sale Hearing. The assignment of each such Assumed Lease and Acquired Contract to the Buyer will not cause a default or otherwise allow the non-Debtor's party thereto to terminate or adversely affect the Buyer's rights thereunder. Unless expressly provided in the APA, in no event shall the Buyer be liable for any Cure Amounts or pre-Closing liabilities arising from or related to the Assumed Contracts with the exception of the Assumed Liabilities.

19. There shall be no rent accelerations, assignment fees, increases or any other fees charged to the Buyer or the Debtor as a result of the assumption, assignment and/or transfer of the Assumed Leases and Acquired Contracts.

20. The Buyer's or its designated affiliate's promise to pay the Cure Amounts and to perform the obligations under the Assumed Leases and Acquired Contracts after the closing date shall constitute adequate assurance of its future performance under the Assumed Leases and Acquired Contracts specified in this Sale Approval Order or in a separate order of even date being assigned to it within the meaning of Sections 365(b)(1)(C) and (f)(2)(B) of the Bankruptcy Code.

21. Upon assignment of the Assumed Leases and Acquired Contracts to the Buyer at or subsequent to the Closing, no default shall exist under any Assumed Lease or Acquired Contract and no non-Debtor party to any Assumed Lease or Acquired Contract shall be permitted to declare a default by or against the Buyer under such Assumed Lease or Acquired Contract or otherwise take action against the Buyer as a result of any Debtor's financial condition,

bankruptcy or failure to perform any of its obligations under the Assumed Lease or Acquired Contract. Upon entry of this Sale Approval Order and assumption and assignment of the Assumed Leases and Acquired Contracts, the Buyer shall be deemed in compliance with all terms and provisions of the Assumed Leases and Acquired Contracts.

22. Notwithstanding anything to the contrary in this Sale Approval Order, no executory contract or unexpired lease will be assumed and assigned unless and until the Closing of the Sale.

23. The failure of the Debtor or Buyer to enforce at any time one or more terms or conditions of any Assumed Lease or Acquired Contract shall not be a waiver of such terms or conditions, or of the Debtor's and Buyer's rights to enforce every term and condition of the Assumed Leases and Acquired Contracts.

Rejection of Excluded Contracts

24. The Excluded Contracts specified in Schedule 2.3A of the APA, as incorporated in this Sale Approval Order, shall be deemed rejected by the Debtor as of the date of Closing of the Sale pursuant to Section 365 of the Bankruptcy Code.

25. Any person or entity that asserts a Claim against the Debtor's estate arising from the rejection of any of the Excluded Contracts shall be required to file a proof of claim with the Bankruptcy Court on or before thirty (30) days following service of this Sale Approval Order, or be forever barred from asserting such a Claim.

26. Buyer shall not have any liability or other obligation arising from the Rejected Contracts or the rejection thereof. Any party to a Excluded Contract shall be forever and permanently enjoined, barred and estopped from asserting against the Buyer, any of its affiliates, its successors or assigns, their property or the Acquired Assets, any claim, lien or interest on

account of any Excluded Contract or the rejection thereof.

Additional Provisions

27. The transaction contemplated by the APA is undertaken by the Buyer in good faith, as that term is used in Section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale to the Buyer. The Buyer is a purchaser in good faith of the Acquired Assets, and is entitled to all of the protections afforded by Section 363(m) of the Bankruptcy Code, and has otherwise acted in good faith with respect to the Debtor, the estate and the transaction contemplated by the APA.

28. The consideration provided by the Buyer for the Acquired Assets under the APA (i) shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act and under the other laws of the United States, any state, territory, possession or the District of Columbia and (ii) is fair and reasonable and may not be avoided under Section 363(n) or any other provision of the Bankruptcy Code, or otherwise.

29. Neither the Buyer, its parents nor affiliates shall be deemed, as a result of any action taken in connection with the purchase of the Acquired Assets, to: (1) be a successor (or other such similarly situated party) the Debtor (other than with respect to the Assumed Liabilities as expressly stated in the APA); (2) have, *de facto* or otherwise, merged with or into the Debtor; (3) be a mere continuation of the Debtor or its estate (and there is no continuity of enterprise between the Buyer and the Debtor); or (4) be holding itself out to the public as a continuation of the Debtor.

30. Each of the Debtor's creditors is hereby authorized and directed to execute such

documents and take all other actions as may be reasonably necessary to release such creditor's Claims in the Acquired Assets, if any, as such Claims may have been recorded or may otherwise exist. If any person or entity that has filed financing statements, mortgages, mechanic's liens, *lis pendens*, or other documents or agreements evidencing any Claims in, against or upon the Acquired Assets prior to the Closing Date of the Sale, in proper form for filing and executed by the appropriate parties, and has not executed termination statements, instruments of satisfaction, releases of all Claims which the person or entity has with respect to the Acquired Assets, then on the Closing Date, or as soon as possible thereafter, (i) the Debtor is hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Acquired Assets and (ii) the Buyer is hereby authorized on behalf of each of the Debtor's creditors, to file, register, or otherwise record a certified copy of this Sale Approval Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Claims in, against, or upon the Acquired Assets of any kind or nature whatsoever.

31. All entities that are presently, or on the Closing Date may be, in possession of some or all of the Acquired Assets are hereby directed to surrender possession of the Acquired Assets to the Buyer on the Closing Date, or as otherwise directed by Buyer, with the Claims of such entity to be satisfied solely from the proceeds of the Sale.

32. The Buyer shall have no liability or responsibility for any liability or other obligation of the Debtor or its estate arising under or related to the Acquired Assets or other assets, operations, activities, or businesses of Debtor or its Affiliates other than for the Assumed Liabilities. Without limiting the generality of the foregoing, and except as otherwise specifically provided for herein and in the APA, the Buyer shall not be liable for any Claims, including any

theory of successor or vicarious liability, of any kind or character whether known or unknown as of the date of Closing, now existing or hereafter arising, whether fixed or contingent, with respect to the Sale, the Debtor or its estate or any obligations of the Debtor or its Affiliates or the estate arising prior to the date of Closing, including but not limited to, liabilities arising, accruing, or payable under, out of, in connection with, or in any way relating to the Acquired Assets or the Acquired Business or the other assets, operations, activities, or businesses of the Debtor or its Affiliates.

33. Subject to the APA, this Sale Approval Order (i) is and shall be effective as a determination that, at Closing, all Claims (except Assumed Liabilities) existing as to the Acquired Assets prior to the date of the Closing have been and hereby are unconditionally released, discharged and terminated as to the Acquired Assets, and that the conveyance described in this Sale Approval Order has been effected, (ii) is and shall be effective to cause all Claims (except Assumed Liabilities) to attach to and be perfected in the proceeds of the Sale of the Acquired Assets, in the order of their priority, with the same validity, force and effect which they now have as against the Acquired Assets, without the need to file any financing statements or other evidence of perfection, and (iii) is and shall be binding upon and govern the acts of all entities including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Acquired Assets.

34. The Debtor or the Buyer and any agent or representative of either of them, are each hereby authorized and empowered to serve upon all filing and recording officers a notice when filing or recording any instruments of transfer (including, without limitation, deeds, leases, and assignments, modifications and terminations of leases) in accordance with this Sale Approval Order and the APA to evidence and implement this paragraph of the Sale Approval Order. All filing and recording officers are hereby directed to accept, file and record all instruments of transfer including, without limitation, deeds, leases, and assignments, modifications and terminations of leases (if any) to be filed and recorded pursuant to and in accordance with this Sale Approval Order or the APA and the various documents related thereto, without the payment of taxes associated with the transfer of the Acquired Assets to the Buyer.

35. This Court retains exclusive jurisdiction to (i) enforce and implement the terms and provisions of the APA, all amendments thereto, any waivers and consents thereunder, and each of the agreements executed in connection therewith, (ii) compel delivery of the Acquired Assets to the Buyer, (iii) resolve any disputes arising under or related to the APA and related agreements, except as otherwise provided therein, (iv) enjoin and adjudicate the assertion of any Claims against the Buyer or the Acquired Assets, and (v) interpret, implement and enforce the provisions of the APA or this Sale Approval Order.

36. As of the Closing, all agreements and all orders of this Court entered prior to the date hereof shall be deemed amended or modified solely to the extent required to permit the consummation of the transactions contemplated by this Sale Approval Order and the APA.

37. Nothing contained (i) in any plan of reorganization (or liquidation) confirmed in the Chapter 11 Case, (ii) the order of confirmation confirming any plan of reorganization (or liquidation), (iii) any order dismissing the Chapter 11 Case or converting it to a Chapter 7

liquidation or (iv) any order appointing an examiner or trustee in the case shall conflict with or derogate from the provisions of the APA or the terms of this Sale Approval Order and no such plan or order shall discharge the obligations of the Debtor under this Sale Approval Order or the APA or any documents or agreements delivered in connection therewith.

38. The terms and provisions of the APA, together with the terms and provisions of this Sale Approval Order, shall be binding in all respects upon, and inure to the benefit of, the Buyer, the Debtor, the Debtor's estate, any of Debtor's affiliates, successors and assigns, the Debtor's creditors, equity members, including, without limitation, minority equity members of the Debtor, and third parties, including, but not limited to persons asserting a Claim against or interest in the Debtor's estate or any of the Acquired Assets to be sold to the Buyer pursuant to the APA or any persons that are party to any Assumed Leases and Acquired Contracts specified in this Sale Approval Order or in a separate order of even date, and their respective successors and assigns. If a trustee or examiner is subsequently appointed in this Case, such trustee or examiner shall likewise be bound, in all respects, to the terms and provisions of this Sale Approval Order. The Order and the APA shall not be subject to rejection pursuant to Section 365 of the Bankruptcy Code or otherwise.

39. The APA and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto in accordance with the terms thereof without further order of the Court, provided that any such modification, amendment or supplement is either not material or is not less favorable to the Debtor. In the event a modification is material and less favorable to the Debtor, the Debtor shall file and serve a notice of such material modification. If no party-in-interest objects within five (5) business days, the modification shall be deemed approved and the Court may enter any such further order as

may be necessary.

40. The failure specifically to include any particular provisions of the APA in this Sale Approval Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the APA be authorized and approved in its entirety.

41. Upon Closing, the Debtor and its estate shall be deemed without further action or order of the Court to have released and discharged the Buyer and its affiliates, and their respective officers, directors, representative, agents, attorneys, investment bankers, and professionals, of and from any causes of action, legal or equitable, suits, debts, covenants, contracts, agreements, judgments, executions, claims, and demands whatsoever whether known or unknown, including in connection with the APA and the Sale of the Acquired Assets, except for obligations arising hereunder or under the APA.

39. The provisions of Bankruptcy Rule 6004(h) and 6006(d) staying the effectiveness of this Order for fourteen (14) days are hereby waived, and this Order shall be effective immediately upon entry thereof.

40. To the extent that this Order is inconsistent with any prior Order or pleading with respect to the Sale Motion in these Chapter 11 Cases, the terms of this Order shall govern.

Dated: February 17, 2011

/e/ Dennis D. O'Brien

Dennis D. O'Brien

United States Bankruptcy Judge

NOTICE OF ELECTRONIC ENTRY AND FILING ORDER OR JUDGMENT Filed and Docket Entry made on 02/17/2011 Lori Vosejka, Clerk, By DLR, Deputy Clerk
